

## **REMARKS**

The Examiner's Office Action has been received and reviewed. Claims 1-20 are currently pending in the application. Claims 1-20 stand rejected. By this paper, claims 1, 8, 13, 17, 19, and 20 have been amended to more particularly point out and distinctly claim the statutory subject matter of this invention. Thus, claims 1-20 are presented for examination. For the reasons set forth below, these claims are believed to be in condition for allowance.

### **Objections**

Claims 19 and 20 stand objected to because of various informalities. Namely, the word "means" is used in the claim without reference to a function for which equivalents can be identified in the specification, as required by 35 U.S.C. § 112, sixth paragraph.

Claims 19 and 20 have been amended to remove the word "means" while correctly identifying the technical components relevant to the claim. Applicant therefore respectfully requests that Examiner's objections based on these informalities be withdrawn.

### **35 U.S.C. § 112 Written Description Rejections**

Claim 17 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement because the specification does not set out how one skilled in the art could perform the step set forth in that claim. Applicant respectfully traverses this rejection as hereinafter set forth.

Claim 17 adds a step to the method disclosed in claim 13. Namely, claim 17 adds the step of determining whether or not a purchase order that has been received is authorized or is not authorized. Claim 17 has been amended to more clearly state the role of this additional step.

Applicant respectfully notes that the *means* of determining whether or not a purchase order is authorized is not claimed. Indeed, claim 17 does not claim “a method of determining” whether a purchase order is authorized. Instead, claim 17 (as amended) claims “the step of determining” whether a purchase order is authorized. By adding the step of claim 17 to the method of claim 13, one skilled in the art can decide that he or she should determine if the purchase order is authorized. This can be done by choosing any well-known method for determining whether a purchase order is authorized. The method selected may be a computerized method; or the method may be as simple as a telephone call to an authorized purchasing agent. The claim does not rest on the method selected, but on the choice of whether to verify the purchase order or not verify the purchase order.

The specification clearly states at page 16, line 16, through page 17, line 2, and in Figure 3, at block 82, that a determination is made as to whether a purchasing order is authorized or not. Making this determination—an act commonly done by those skilled in the art—and not how the determination is made, is the step claimed in dependent claim 17.

Because the amended claim 17 seeks to claim no subject matter for which a written description is not included, Applicant respectfully requests that the rejection of claim 17 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, be withdrawn.

### **35 U.S.C. § 101 Subject Matter Rejections**

Claims 1-20 stand rejected as being directed to non-statutory subject matter. Applicant respectfully traverses this rejection as hereinafter set forth.

Claim 1 refers to a commerce portal, which Examiner notes is a Web site that serves as a gateway to the Internet. Claim 1 further includes, in the system disclosed, multiple computer devices. Claim 13 discloses a system that includes a computer and an associated network, which are used to implement the method disclosed. Although applicant respectfully submits that these claims expressly include technological elements, applicant has implemented Examiner's suggestion by amending claims 1, 8, and 13 to highlight that the networks referred to are computer networks rather than networks of a less technological nature.

Examiner notes that claims 13-18 are directed to a method and its steps and that some of these recite no technology. Applicant respectfully points out, however, that claim 13 includes express reference to a technological system that includes a computer device and a computer network. The method disclosed in claim 13 and in claims 14-18 is implemented technologically using the system disclosed as part of claim 13.

Because claims 1-20, as amended, refer expressly to technological means such as computer devices and computer networks, or to methods that are implemented using such technological means, applicant respectfully requests that the rejection of claims 1-20 under 35 U.S.C. § 101, as being directed to non-statutory subject matter, be withdrawn.

### **35 U.S.C. § 103(a) Obviousness Rejections**

#### Obviousness Rejection Based on U.S. Patent No. 6,260,024 to Shkedy

Claims 1-3 and 5-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,260,024 to Shkedy (hereinafter "Shkedy"). Applicant respectfully traverses this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Although Shkedy discloses an e-commerce application that relates to selling goods via a computer network, the approach disclosed is significantly different than that of the present invention. Further, no suggestion of the innovation disclosed in the present invention is made in Shkedy.

As Examiner notes, Shkedy discloses a computer-implemented system wherein multiple products are offered for sale by multiple vendors. Purchase orders are used, and purchases may be monitored or tracked. Further, it is true that one of ordinary skill in the art would have combined the disclosure in Shkedy with common knowledge to create a Web-based commerce portal offering the innovation disclosed by Shkedy. As Examiner correctly surmises, this would have led to better negotiating power and lower prices.

But having done all of this, one skilled in the art would not have approached the present invention, which, though it uses a computer, a network, and a Web-based commerce portal, has entirely different goals, and uses quite different elements to achieve them.

The goal of the invention disclosed in Shkedy is lower prices for multiple buyers. This is achieved by pooling purchases of a product by multiple buyers. (Col. 4, lines 48-51.) Networked computer devices are used to facilitate this pooling of purchases. (See, for example, at least Col. 12, line 56 to Col. 13, line 6.) Further, Shkedy contemplates *sellers* bidding (offering a price) for a good after purchases from multiple buyers have been pooled. A seller negotiates with multiple

buyers making a large, pooled purchase. The result is a lower price for all buyers. This is reflected in the language of each independent claim in Shkedy (see claims 1, 32, 33, and 34), where the terms “forward purchase order” and “purchase stipulation” are used to show that the central controller and the buyer agree on a desired price before the seller is involved in the purchase transaction.

The goal of the present invention is convenience for a *single* buyer. A single buyer pools multiple products onto a single purchase order. The commerce portal disclosed then distributes the elements of that purchase order to multiple sellers. (See specification at page 19, lines 14-17.) The buyer has no additional negotiating strength with sellers. The buyer must pay a standard list price for each item, or else the commerce portal is configured to use a price that has been previously negotiated between the buyer and the seller. (See specification at page 18, lines 14-16.)

Shkedy does not provide any advantage when a single buyer purchases diverse products on a single purchase order. The present invention discloses dividing among different vendors a *purchase order* that contains *multiple* products and originates from *one buyer*. Shkedy’s focus is on requesting a *bid* from multiple vendors for a *single* product desired by *multiple buyers*. Shkedy does not teach or suggest that a single purchase order for multiple diverse items be distributed among multiple vendors without a bidding process; doing so would remove the price advantage that Shkedy seeks.

Because Shkedy neither teaches the methods disclosed in the present invention, nor suggests the techniques, methods, or goals of the present invention, applicant respectfully submits that the present invention is not obvious over Shkedy, and respectfully requests that the

rejection of claims 1-3 and 5-20 under 35 U.S.C. § 103(a) as being unpatentable over Shkedy, be withdrawn.

Obviousness Rejection Based on Shkedy in view of U.S. Patent No. 5,991,728 to DeBusk

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Shkedy in view of U.S. Patent No. 5,991,728 to DeBusk (hereinafter “DeBusk”). Applicant respectfully traverses this rejection, as hereinafter set forth.

DeBusk describes a system for tracking the use of multiple medical products. That system permits users to optimize decisions about how many medical products to purchase and how vendors can collectively package those products based on commonly performed medical procedures. (Col. 4, lines 42-64.) Dialysis machines are mentioned as one type of medical product that can benefit from the system disclosed in DeBusk. (Col. 12, lines 28-52.) Claim 4 of the present invention relates to using the present invention for medical products related to dialysis.

Applicant respectfully suggests the following result would obtain when the invention in DeBusk is combined with that in Shkedy, as discussed in the previous section, in the context of claim 4 regarding dialysis procedures: A medical facility would use DeBusk to determine the facility’s usage of a dialysis machine, then generate a purchase order for such a dialysis machine when needed. Using Shkedy, that purchase order would be pooled with purchase orders for dialysis machines from other medical facilities. This pooled purchase order would be offered to multiple vendors of dialysis machines, one of which would offer the lowest price to all medical facilities included in the pooled purchase order. The medical facilities would each receive and pay the low price for the dialysis machine.

Conversely, the present invention would permit a medical facility to determine the many medical products needed for its dialysis procedures, possibly in quantities carefully determined by DeBusk, and submit all those products on a single purchase order to a commerce portal. The portal would distribute the order for each product on the purchase order to a separate vendor, each of whom would process that order for the medical facility.

DeBusk mentions that multiple sources of supply (multiple vendors) could contribute to a Tracepak for a medical procedure. (Col. 5., lines 2-6.) Such a Tracepak is then sold to a medical facility by a single vendor. Conversely, the present invention, by maintaining information on contract pricing with a variety of independent vendors (see specification at page 18, lines 12-17), permits a single purchase order to be submitted to the disclosed portal where that purchase order contains items as diverse as the medical facility may need, without the constraints intended for Tracepak products, and without relying on a single vendor to package products together.

Further, DeBusk includes not a single reference in text or figures to the method of purchasing the medical supplies that are tracked using the invention disclosed in DeBusk. No suggestion is made of the need for a single purchasing point for multiple types of products beyond combining products into a Tracepak, nor is the current inconvenience of ordering medical products from multiple sources mentioned.

DeBusk includes no suggestion of the need for a convenient multi-vendor ordering system—much less the means of addressing that need. A combination of DeBusk with the invention disclosed in or even suggested by Shkedy would not yield the innovation disclosed in the present invention. Accordingly, applicant respectfully submits that the present invention is not obvious over Shkedy in view of DeBusk, and respectfully requests that the rejection of claim

4 under 35 U.S.C. § 103(a) as being unpatentable over Shkedy in view of DeBusk, be withdrawn.

### ENTRY OF AMENDMENTS

The amendments to claims 1, 8, 13, 17, 19, and 20 above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, the amendments do not raise new issues or require a further search.

### CONCLUSION

In view of the foregoing, Applicant respectfully submits that claims 1-20 are in condition for immediate allowance. In the event the Examiner finds any remaining impediment to the prompt allowance of any of these claims which could be clarified in a telephone conference, the Examiner is respectfully urged to initiate the same with the Applicant's undersigned attorney.

DATED this 7<sup>th</sup> day of March, 2005.

Respectfully submitted,



Berne S. Broadbent  
Attorney for Applicant  
Registration No. 30,550

KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 328-3600  
Facsimile: (801) 321-4893